

## REMARKS

Please reconsider the claims in the application in view of the remarks below.

### Claim Rejection – 35 U.S.C. § 102(b)

The Office Action, dated April 16, 2008, rejected claims 1-3 and 14 under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 7,130,262 (“Cortez”). Of these pending claims, claims 1 and 14 are independent. In this reply, without conceding to the propriety of the rejections, applicant is amending independent claims to further clarify what is being claimed. Support for the amendment can be found on page 9, line 28 to page 11, line 11 of the originally submitted specification.

According to MPEP §2131, a “claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference” (*quoting Verdegaal Bros v. Union Oil Co of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed Cir. 1987)).

Cortez does not expressly or inherently describe every element claimed in independent claims as amended. For example, claim 1 recites a “hierarchical network [comprising] first nodes on a first layer of the hierarchical network, each first node being capable to perform one of more first node functions” at lines 3-4, where “one or more of said first nodes comprises one or more second nodes on a distinguishable second layer of the hierarchical network, thereby unknown to the first nodes situated on the first layer” at lines 16-18.

In contrast, Cortez fails to discuss either a hierarchical network or two nodes that are unknown to each other and separated by distinguishable layers of the network hierarchy. As

shown in Fig. 1 of Cortez, nodes 16, 20, 21 and 18 each reside on the same network and Cortez implies the each node is aware of the other nodes on the network (*e.g.* Cortez states “a controller in node 16 thereof must choose one of the existing paths ... so that the data packets arrive at the destination node 18” in column 3, lines 50-53, to imply that node 16 is aware of node 18). Thus, it is clear that Cortez does not disclose, suggest or teach either a hierarchical network or two nodes separated by distinguishable layers of the network hierarchy. Rather, Cortez teaches a network where all the nodes are aware of each other.

In addition, claim 1 recites “wherein said first node functions of the first nodes are provided by said second node functions” at lines 19-20. Cortez, conversely, merely teaches a single function (forwarding data after selecting a path, as summarized by the Office Action in the last paragraph on page 2) that is carried out by nodes on a network. As stated above, Cortez only discloses a single layer network and would necessarily teach the sole function taught by Cortez being performed on a single layer of a network. Thus, it is clear that Cortez does not disclose, suggest or teach “first node functions of the first nodes [being] provided by said second node functions”. Rather, Cortez teaches a single function being performed on a single network layer.

For at least the above reason, applicant believes that independent claims 1 and 14 and their respective dependent claims, at least by virtue of dependency, are not anticipated by Cortez.

#### Claim Rejection – 35 U.S.C. § 102(b)

The Office Action rejected claims 4, 5 and 13 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No 7,065,045 (“Jeffries”). Of these pending claims, claim 4 is independent. In this reply, without conceding to the propriety of the rejections, applicant is amending independent claims to further clarify what is being claimed. Support for the

amendment can be found on page 9, line 28 to page 11, line 11 of the originally submitted specification.

As stated above, according to MPEP §2131, to properly anticipate a claim, the prior art reference must describe every element recited in the rejected claim.

Jeffries does not expressly or inherently describe every element claimed in independent claims as amended. For example, claim 4 recites a “hierarchical network [comprising] first nodes on a first layer of the hierarchical network, each first node being capable to perform one of more first node functions” at lines 3-4, where “one or more of said first nodes comprises one or more second nodes on a distinguishable second layer of the hierarchical network, thereby unknown to the first nodes situated on the first layer” at lines 7-8 and “a first data path determining means to determine a number of data path options through the first nodes for each data path option, the first nodes having one or more assigned first node functions “ at lines 12-14.

Similar to Cortez, Jeffries fails to discuss either a hierarchical network or two nodes that are unknown to each other and separated by distinguishable layers of the network hierarchy. For example, Jeffries describes “user having a computer system coupled to the node A 12 sends a message to a user having a computer system coupled to the node F 16 ... [where] node A 12 is the source node ... while node F is the destination node” in column 1, lines 56-61, implying that the source node A 12 is aware of destination node F16. Thus, it is clear that Jeffries does not disclose, suggest or teach either a hierarchical network or two nodes separated by distinguishable layers of the network hierarchy. Rather, Jeffries teaches a network where all the nodes are aware of each other.

In addition, claim 4 recites “wherein said first node functions of the first nodes are provided by said second node functions” at lines 10-11. Jeffries, conversely, merely teaches a single function that is carried out by nodes on a network. As stated above, Jeffries only discloses a single layer network and would necessarily teach the sole function taught by Jeffries as being performed on a single layer of a network. Thus, it is clear that Jeffries does not disclose, suggest or teach “first node functions of the first nodes [being] provided by said second node functions”. Rather, Jeffries teaches a single function being performed on a single network layer.

For at least the above reason, applicant believes that independent claim 4 and the dependent claims thereof, at least by virtue of dependency, are not anticipated by Jeffries.

#### Claim Rejection – 35 U.S.C. § 102(e)

The Office Action rejected independent claim 6 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No 5,483,522 (“Derby”).

As stated above, according to MPEP §2131, to properly anticipate a claim, the prior art reference must describe every element recited in the rejected claim.

Derby does not expressly or inherently describe every element claimed in independent claims as amended. For example, claim 6 recites “A network node amongst a plurality of network nodes, comprising: at least one subnode unknown to the plurality of network nodes” at lines 1-2. In contrast, In contrast, Derby describes a database, where the “database is replicated in each node; each node regularly distributes topology update information about itself and its links so that all nodes maintain a consistent view of the topology of the overall network” in column 2, lines 48-51 and describes a “method and apparatus for making limited internal-node

communication facilities externally visible via the topology database by creating subnodes connected with intranode links as subsidiary parts of a node” in the last five lines of column 3. Thus, it is clear that Derby does not disclose, suggest or teach either a hierarchical network or two nodes separated by distinguishable layers of the network hierarchy. Rather, Derby teaches a network where all the nodes and subnodes of the network are partially visible to each other, as evidenced by a database stored on each node that stores subnodes as subsidiary parts of the node network.

In addition, claim 6 recites “a request receiving means to *receive a request* for providing overall capacity values related to a set of at least one specific function able to be executed by the network node” (emphasis added) at lines 5-6. In contrast, what is cited in the Office Action as anticipating this element of claim 6 is Derby describing that once “the path for a connection is *selected*, the bandwidth management and reservation function allocates bandwidth on the links of the path” (emphasis added) in column 3, lines 4-7. Thus, in the portions of Derby cited by the Office Action as anticipating this element, Derby is silent with respect to any requests, and specifically, whether the selection of a path is in response to a request.

For at least the above reason, applicant believes that independent claim 6 is not anticipated by Derby.

#### Claim Rejection – 35 U.S.C. §103(a)

The Office Action rejected claims 7-12 and 15 under 35 U.S.C. §103(a) as allegedly being unpatentable over Cortez in view of Jeffries.

According to MPEP §2142, a required prong in establishing a prima facie case of obviousness is that the prior art references when combined must teach or suggest all the claim limitations.

As discussed above, Cortez and Jeffries each fails to show a hierarchical network and two nodes that are unknown to each other because they are separated by distinguishable layers of the network hierarchy. Since neither Cortez nor Jeffries teaches or suggests these elements, the combination of those references would similarly fail to teach or suggest those elements. Therefore, claims 7-12 and 15 are believed to be unobvious over the cited references.

Conclusion:

In view of the foregoing, this application is now believed to be in condition for allowance, and a Notice of Allowance is respectfully requested. If the Examiner believes a telephone conference might expedite prosecution of this case, applicant respectfully requests that the Examiner call applicant's attorney at (516) 742-4343.

Sincerely,



Steven Fischman  
Registration No. 34,594

SCULLY, SCOTT, MURPHY & PRESSER, P.C.  
400 Garden City Plaza, Suite 300  
Garden City, New York 11530  
(516) 742-4343

SF/DM:ej